

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30-06-2006

CORAM

THE HONOURABLE MR.JUSTICE P.K. MISRA
AND
THE HONOURABLE MRS. JUSTICE CHITRA VENKATARAMAN

W.P.No.18411 OF 2001, C.R.P.NO.1126 OF 2002

AND
CONTEMPT PETITION NO.403 OF 2003
and
C.M.P.No.1336/04, WPMP.Nos.27087/01, 58210/02 &

Sub Appln.No.211 of 2002

W.P.No.18411 of 2001

H.H. The Prince of Arcot Endowments,
Trichy, represented by its Agent,
Mr.U.Mohamed Khalilullah, having his
Office at No.12 Kiledar Street,
Trichy-2. Petitioner

Versus

1. The Tamil Nadu Wakf Board,
3 Santhome High Road,
Chennai-600 004, by its
Chief Executive Officer.

2. Mr.Mohamed Ilyas

3. Mr.R.A.Mallick

4. Mr.K.Jajuddin

5. Mr.G.R.Mohamed Ali

6. Mr.Jafarullah

... Respondents

C.R.P.NO.1126 OF 2002
H.H.NAWAB MOHAMMEDL ABDUL ALI
Prince of Arcot,
Amir Mahall, Chennai-14.

... Petitioner

Versus

The Tamil Nadu Wakf Board
Represented by its Chief Executive Officer,
No.3, Santhome High Road,
Chennai-4.

... Respondent

Contempt Appn No. 403 of 2002

H.H.NAWAB MOHAMMEDL ABDUL ALI
Prince of Arcot,
Amir Mahall, Chennai-14.

... Applicant

Versus

1. Tamil Nadu Wakf Board
Represented by its Chief Executive Officer,
3, Santhome High Road, Chennai-4.
2. Mrs.Badhar Sayeed,
Chair Person,
Tamil Nadu Wakf Board,
Chennai-4.
3. Janab. M.K.Khan,
Member,
Tamil Nadu Wakf Board,
Chennai-4.
4. Mrs.Beebijan,
Member,
Tamil Nadu Wakf Board,
Chennai-4.
5. Janab M.S.Abdul Kader,
Member,
Tamil Nadu Wakf Board,
Chennai-4.
6. Janab Abdul Hakkim,
Member,
Tamil Nadu Wakf Board,
Chennai-4.
7. Janab M.S.A.Shajahan,
Member,
Tamil Nadu Wakf Board,
Chennai-4.

8. Janab Dr.S.M.Dastagir
Member,
Tamil Nadu Wakf Board,
Chennai-4.

9. Janab Haja K.Majeed
Member,
Tamil Nadu Wakf Board,
Chennai-4.

10. Janab Sikkandhar
Member,
Tamil Nadu Wakf Board,
Chennai-4.

11. Janab Kulam Askari
Member,
Tamil Nadu Wakf Board,
Chennai-4.

... Respondents

W.P.NO.18411 of 2001 has been filed under Article 226 of the Constitution for the issuance of writ of certiorarified mandamus calling for the records relating to the order of the first respondent, Tamil Nadu Wakf Board made on 30-5-2001 in relation to item No.121/2000/WEA.7/2000/E5/Try and item No.80/2000 in Rc.No.6831/2000/C1/Try and quash the same and direct the Board by way of mandamus to do its legal duty by forbearing from interfering with the internal administration of the Prince of Arcot Endowments and its properties in terms of compromise decree in W.P.Nos.1395 to 1397 of 1964 and as interpreted and decided by the Division Bench in W.A.2204/1987 on 13-10-1992 and which have become final between the parties.

C.R.P.No.1126 of 2002 against the order passed in I.A.No.118/2002, in Wakf CMA No.2 of 2002 dated 28.6.2002, on the file of the Principal Subordinate Judge, Tiruchirapalli.

Cont.Appln.No.403 of 2002 has been filed under Sections 10 & 12 of the Contempt of Courts Act to punish the respondent for disobeying the order passed by this Court in W.A.No.2204 of 1987 dated 13.10.1992.

For Petitioner : Mr.Aravind P. Dattar
in CRP.NO.1126/02 Senior Advocate for
and Cont.P.403/2002 Mr.A. Thiagarajan

For Respondent : Mr.R. Muthukumaraswamy
in CRP.No.1126/02 Addl. Advocate General
R1 in WP.18411/01 assisted by

R1 & R2 in Cont.Petn. Mr.S. Thiruvengataswamy
No.403 of 2002

For Respondents 2,
4 to 6 in WP.18411/01: Mr.V. Raghavachari

For Petitioner
in WP.18411/2001 : Mr.V.S. Ramakrishnan
- - -

COMMON JUDGMENT

P.K. MISRA, J

The facts giving rise to the filing of the present writ petition and the connected Civil Revision and the Contempt Petition are as follows :-

It is claimed by the petitioner that the properties comprised in the Prince of Arcot endowments were actually private endowments of Nawabs of Carnatic, who ruled the former Madras Presidency. Such endowments had been founded as an adjunct of their sovereign powers and therefore such endowments were not strictly speaking wakfs. While the matter stood thus, in 1801, the East India Company took over the civil administration and entrusted the administration to the Nawabs of Carnatic, who were reduced as Titular heads. In 1855, after the death of Nawab Wallajah-V, the British administration by applying the Doctrine of Lapse, took over the administration of the endowed properties. However, subsequently, Azeem Jah Bahadur by virtue of Royal Letters Patent was appointed as "Prince of Arcot" and put back in charge of villages, Mosques and endowments. Subsequently, in 1913, a suit for framing a scheme under Section 92 of the Code of Civil Procedure, 1908 was filed with the sanction of the Advocate General and a scheme had been amicably framed. While the matter stood thus, the Prince of Arcot Endowments Act, 1922 (Madras Act II of 1923), hereinafter referred to as "the Endowments Act, 1922" in short, was passed by the Legislative Council of the Madras State and on obtaining the consent of the Governor of Madras as well as Governor General of India, such act became operative. It was "an Act which provides for the better management of the charitable and religious endowments under the control of the Prince of Arcot in the Presidency of Madras". Under Section 2, the Act was made applicable to the charitable and religious endowments specified in Schedule A and Schedule B annexed to the Act. Sections 3 to 5 being relevant, are extracted hereunder :-

"3. The charitable and religious endowments specified in Schedule A shall be administered by the Prince of Arcot for the time being so far as the endowments and institutions in the district of Trichinopoly are concerned in accordance with the rules contained in Schedule C hereto

or any modification thereof under section 4 of the Act and as regards all other endowments and institutions in accordance with such rules as may from time to time be made by the Local Government.

4. The rules in Schedule C except rules (1), (2), (3) and (11) may be added to or altered by the Local Government after consultation with the Prince and the committee, if any, appointed under the rules.

4-A. At least sixty days before making any rules in modification of the rules in Schedule C or for the administration of the endowments specified in Schedule B, the Local Government shall publish a draft of the proposed rules in the Fort St. George Gazette, and any person may, during the said period, making any objection or suggestion to the Local Government who shall take the same into consideration before finally making the rules. The rules may be made by the Local Government either as originally drawn or as amended and shall come into operation forthwith or at such time as may be prescribed in the rules.

5. No suit claiming any of the reliefs specified in the Religious Endowments Act, XX of 1863, or in sub-section (1) of section 92 of the Code of Civil Procedure, 1908, shall be instituted or maintained or continued in respect of the aforesaid charitable and religious trusts."

1.1 Schedule A contains the list of properties constituting the charitable and religious endowments under the control of the Prince of Arcot. Schedule B contains the list of charitable and religious institutions maintained out of the Endowments in Schedule A and Schedule C consists of the scheme of administration of the charitable and religious endowments under the control of the Prince of Arcot in Trichinopoly.

1.2 Statement of Objects and Reasons of the said Act being relevant, is also extracted hereunder :-

"The Prince of Arcot administers certain charitable and religious institutions founded by his ancestors, Nawab Wallajah and Nawab Oomdataal-oomra of Arcot. The superintendence of the endowments connected with them was entrusted by the Local Government to the Prince of Arcot and his successors in title in 1867; and they were made responsible for the maintenance, and repair of their structures. A suit was recently filed against the Prince in the Trichinopoly Subordinate Judge's Court for removing him from trusteeship, for the appointment of a committee of supervision and for settling a scheme of management in connection with the endowments in the district of

Trichinopoly. That suit has been amicably settled in the interests of the institutions and in accordance with the opinion of the leading representatives of the Muhammadan community interested in the endowments and a scheme has been framed as set forth in Schedule C, which adequately provides against maladministration. It is necessary that the supervision of the Local Government provided for by that scheme should be authorized by Law. It is also expedient that neither the Prince should be liable to be removed from his trusteeship nor the scheme altered by means of a suit under the Religious Endowments Act, XX of 1863, or under section 92 of the Code of Civil Procedure. The object of the Bill is accordingly to give effect to the scheduled scheme as regards the endowments in the Trichinopoly district, and to enable rules to be made, if necessary, for the general superintendence of endowments in other parts of the Presidency, as well as to oust the jurisdiction of civil courts to the extent indicated."

1.3 The enactment of Madras Act II of 1923 gave a quietus to the dispute for about 4 decades. However, after the Wakf Act, 1954 was enacted by Parliament and was extended to Madras on 15th January, 1955, and the properties of Prince of Arcot Endowments were registered under the said Act, one Mr. Muhammed Mahmood moved the Tamil Nadu Wakf Board in 1964 for framing a scheme for the endowments. At that stage, on behalf of the present petitioner W.P.No.1395 of 1964 was filed prohibiting the State Wakf Board from interfering with the affairs of the Prince of Arcot Endowments restraining them from proceeding with W.A.No.23 of 1964 (Application filed by Muhammed Mahmood). W.P.No.1396 of 1964 was filed for issuing a writ of Certiorari for quashing the initiation of suo motu proceedings in W.B.No.67 dated 15.7.1964 for framing a scheme. W.P.No.1397 of 1964 was filed for issuing a writ of Mandamus directing the State Wakf Board to remove the Prince of Arcot Endowments from the List of Wakfs of the Madras State. In the said writ petitions, Muhammed Mahmood, who was the second respondent in W.P.No.1395 of 1964, had not appeared. Ultimately a compromise was effected between the petitioner and the State Wakf Board and it is extracted hereunder :-

"

MEMO OF COMPROMISE

1. The petitioner Endowments will continue to be administered by the present H.H. The Prince of Arcot or his agent for the time being. There should not be any Committee or Sub-Committee to run the endowments. In other respects the scheme envisaged under the Madras Act II of 1923 will apply.

2. The petitioner Endowments agrees that it shall come under the entire control and purview of the Central Act 29 of 1954.

3. The Special Officer for Wakfs/State Wakf Board shall levy contribution over the income from the properties of the Endowments under Central Act 29 of 1954 and that the arrears of contribution payable by the Endowments shall be paid to the Special Officer for Wakfs in two instalments the 1st instalment payable on or before 17th April 1971 and the 2nd instalment on or before 17th July 1971. If necessary, towards the contribution payable by the Endowments to the Special Officer for Wakfs, the Endowments shall transfer the fixed deposits towards contribution to the Special Officer for Wakfs.

4. The Special Officer for Wakfs/State Wakf Board will not interfere in the internal administration of the Prince of Arcot Endowments and its properties if the administration is in consonance with the Muslim Wakfs Act. The Special Officer for Wakfs/State Wakf Board however shall assist the petitioner in managing and administering the properties of the Endowments if and when such assistance is required by the petitioner Endowments in the interests of the Endowments.

5. the Petitioner represents that the accounts of the Endowments have been audited upto 1969/70 by its Auditors and therefore the Special Officer for Wakfs agrees that the Local Fund Audit under the authority of the Special Officer for Wakfs shall commence to audit the accounts of the Endowments and its properties from 1970-71.

6. The Special Officer for Wakfs/State Wakf Board shall assist the Endowments to recover the Income-tax deduction and help the Endowments to recover the alienated properties.

7. The petitioner and the respondent shall start a College for girls or an Industrial School for boys at Tiruchirapalli and such a College shall be named as "THE PRINCE OF ARCOT WAKF BOARD COLLEGE FOR GIRLS" or "THE PRINCE OF ARCOT WAKF BOARD INDUSTRIAL SCHOOL FOR BOYS" as the case may be.

8. In view of the compromise agreed to between the parties hereto, the W.P.Nos.1395, 1396 and 1397 of 1964 be dismissed as withdrawn and not pressed and equally the Special Officer for Wakfs shall not take any action against the petitioner on the petitions pending before him in view of this compromise.

9. There shall be no order as to costs."

In view of the compromise, three writ petitions were dismissed as "withdrawn and not pressed" on 6.4.1971.

1.4 In 1977, Anjuman-e-Mussalliyan-e-Masjid-e-Wallajahi filed a petition before the State Wakf Board under Section 55(2) of the Wakf Act, 1954 to institute a suit for proper administration of the Prince

of Arcot Endowments in the city of Madras. At that stage, the petitioner filed W.P.No.6010 of 1979 for issuing a writ of Prohibition prohibiting the State Wakf Board from proceeding with the enquiry. In the meantime, the State Wakf Board had initiated suo motu action for administration of the endowments of Prince of Arcot at Trichirapalli and notice dated 22.2.1980 had been sent intimating the proposal of the Board to constitute an Advisory Committee to assist the Agent of the Prince of Arcot. Such notice was challenged in W.P.No.1312 of 1980. While those writ petitions were pending, the petitioner filed W.P.No.3763 of 1986 for issuing a direction to remove the endowments of Prince of Arcot from the list of Wakfs of the Madras State. All the three writ petitions were heard together. The contention of the State Wakf Board at that stage was that on the basis of the terms of the compromise, the Wakf Board was entitled to initiate appropriate proceedings. The contention of Anjuman-e-Mussalliyan-e-Masjid-e-Wallajahi, who was the second respondent in W.P.No.6010 of 1979 and W.P.No.3763 of 1986, was to the effect that the Madras Act II of 1923 stood repealed under the Wakf Act, 1954 as the earlier Act was repugnant to the later Act. While considering various contentions, the learned single Judge in his judgment dated 28.1.1987 observed as follows :-

"... Placing reliance on the language of clause (2) of the Memorandum of Compromise, learned counsel for the first-respondent would advance a submission that there is no escape from the applicability of the entire provisions of Act 29 of 1954. In my view there is no need to dwell upon the scope and amplitude under which the endowments shall be governed by Act 29 of 1954, for the purposes of the present case, because assuming that the case of the first-respondent that the entirety of the provisions of Act 29 of 1954 shall apply to the endowments is correct and has got to be accepted, yet the possibility of interference can come into play only if the administration or in other words the management of the endowments is not in consonance with the provisions of Act 29 of 1954. This is what clause (4) of the Memorandum of Compromise comprehends, stipulates and lays down. Learned counsel for the first-respondent is not in a position to point out any specific provision in Act 29 of 1954 as it stood at the relevant point of time and as it stands even today relating to and delineating the administration or management of endowments like the present one on the basis of which it could be stated that the administration of the present endowments is not in consonance with them. It must be straightaway pointed out that Act 29 of 1954 does not lay down any scheme or rules for the administration or management of any particular wakf or wakfs. Only if the administration of the endowments is not in consonance with any provision of Act 29 of 1954, clause (4) found both in the Memorandum of Compromise and in the Order drafted by this Court, can come into play.

Hence, I do not propose to decide this larger question academically, when the facts do not warrant such probing at this juncture. As rightly contended by learned counsel for the petitioner, I find that it is not the complaint against the petitioner that the obligations cast upon him under the terms of the Memorandum of Compromise were not and are not being adhered to by him. But, the more important aspect is that even on the assumption, the entire provisions of Act 29 of 1954 are attracted, no case is made out that the administration or management of the endowments is not in consonance with any specific provision of Act 29 of 1954, laying down rules for such administration or management. This being the factual position, then the present proceedings must be characterised as totally incompetent and lacking in jurisdiction. Hence, I have to eschew the contention put forth by the learned counsel for the first-respondent."

(Emphasis added)

While dealing with the contention of the second respondent in those writ petitions, the learned single Judge further observed as follows :-

"8. The second-respondent in W.P.No.6010 of 1979 and 3763 of 1986 is a Society, registered under the Societies Registration Act, with the avowed object of taking steps from time to time for the proper upkeep and maintenance of the Wallajahi Mosque, Triplicane, Madras, and this is one of the endowments and institutions covered by Madras Act II of 1923. It has no interest in any other endowment or institution covered by Madras Act II of 1923. In its counter-affidavit filed in W.P.No.6010 of 1979, it has taken up the stand that Madras Act II of 1923 was repealed expressly by Section 69(2) of Act 29 of 1954. This is factually incorrect and there is no express repeal of Madras Act II of 1923 by Section 69(2) of Act 29 of 1954. Only realising this position, Mr.V.S. Subramanyan and that too in the course of his arguments, would submit that there is a repeal by implication, because the Special Statute; a State enactment Madras Act II of 1923 is repugnant to the general statute Act 29 of 1954, a Central enactment. Before I ventured to go into the intricacies of the maxim 'Generalia Specialibus non derogant', I called upon Mr.V.S. Subramanayan to point out the aspects of repugnancy or inconsistency between the enactments. Learned counsel would only submit that the Scheme in Schedule 'C' to Madras Act II of 1923 come into conflict with certain provisions of Act 29 of 1954. He would state that rule 3 in Schedule 'C' runs contrary to Sections 42 and 43 of Act 29 of 1954, in that the said rule 3 contemplates appointment of an Agent by the Prince of

Arcot, and this would militate against the power of the State Wakf Board to appoint and remove a Muthavalli, under Sections 42 and 43 of Act 29 of 1954. Learned counsel would also state that Rules 8 and 9 in Schedule 'C' to Madras Act II of 1923 relating to Accounts and Audit would come into conflict with Sections 31, 32 and 33 of Act 29 of 1954. There are all the only features, which the learned counsel advanced on his theory of repugnancy and inconsistency. Even these contentions, as stated above, were expressed only in the course of arguments. They have not been specifically pleaded in the counter-affidavit. This submission could not have countenance and scrutiny at the hands of this Court, for the simple reason, the Scheme in Schedule 'C' to Madras Act II of 1923 relates to the Endowments and Institutions in Tiruchirapalli alone and does not touch any endowment or institution in the city of Madras. The second-respondent in W.P.Nos.6010 of 1979 and 3763 of 1986 has not proclaimed any interest in the endowments and institutions in Tiruchirapalli. It has taken up cudgels against the petitioner only in respect of Wallajahi Mosque, Triplicane, Madras. The Scheme in Schedule 'C' to Madras Act II of 1923 has nothing to do with this mosque. If this is so, certainly it will not lie in the mouth of the second-respondent through its counsel to voice forth a grievance of repugnancy and inconsistency between Schedule 'C' to Madras Act II of 1923 and Act 29 of 1954. It has no locus standi at all to advance this theory of repugnancy and inconsistency between the two enactments. On being called upon to express its stand on this aspect, the State of Tamil Nadu, in an affidavit of clarification filed by its concerned Deputy Secretary, has declared that Madras Act II of 1923 cannot be said to have been repealed under Section 69(2) of Act 29 of 1954. It has already been noticed that the State Wakf Board has no plea of repugnancy and inconsistency. Though I heard submissions and counter-submissions on this aspect, both from Mr.V.S. Subramanyan and from Mr.V.P. Raman, there is no need at all to dwell upon this aspect, if I take note of the limited place and role of the second-respondent in W.P.Nos.6010 of 1979 and 3763 of 1986, could assume as against the petitioner. Hence, I have to repel this line of attack put forth by the said respondent."

Ultimately, W.P.Nos.6010 of 1979 and 1312 of 1980 were allowed and W.P.No.3763 of 1986, where the petitioner has prayed for exclusion of the endowments of the Prince of Arcot from the list of Wakfs, was dismissed.

1.5 W.A.No.2204 of 1987 was filed by Anjuman-e-Mussalliyah-e-Masjid-e-Wallajahi, so far as such order related to W.P.No.6010 of 1979. The Division Bench, while dismissing the appeal, observed as follows :-

"4. ... A combined reading of clauses 1 and 4 clearly establishes that the Wakf Board had agreed to allow the Prince of Arcot to administer the Endowments, as before without any interference on its part. It is significant that even before the learned Judge it was not the complaint that the 1st respondent was not adhering to the terms of the memorandum of compromise and the 2nd respondent Wakf Board also did not make any attempt to resile from the compromise. On a fair and conjoint reading of clauses 1 and 4 of the terms of the compromise, referred to earlier, it is clear that the Wakf Board had agreed to allow the Prince of Arcot to administer the endowments without any interference in their internal administration either by the appointment of Committee or sub-committees or even otherwise. It is also important to note that the Wakf Board had agreed to offer its assistance in the management and administration of the properties of the Endowments and agreed to render such assistance, as and when required by the 1st respondent herein. This would also indicate that the Wakf Board, apart from rendering such assistance, as may be required by the first respondent from time to time, had agreed to keep aloof in the matter of administration relating to the endowments by the Prince of Arcot. Clause 2 of the compromise, on which considerable reliance was placed, cannot be read in isolation. Therefrom, it is seen that the 1st respondent had agreed that the Endowments shall come under the entire control and purview of the Wakf Act, as agreed to by him as could be gathered from the order passed in W.P.Nos.1395 to 1397 of 1964. A reading of clauses 2, 3 and 5 together, would show that the 1st respondent and the Wakf Board had agreed that the Board is at liberty to levy contribution and the 1st respondent had agreed for the audit of the accounts by the Local Fund Audit under the authority of the Special Officer of the Wakf Board. Apart from the aforesaid aspects, the terms of the compromise do not in any manner affect the management and administration of the Endowments by the Prince of Arcot. Though under clause 2 of the compromise, it is seen that the 1st respondent had agreed that the endowments shall come into the entire control and purview of the Wakf Act, that clause, as stated earlier, cannot be read in isolation, but along with clauses 3 and 5, if so read, it is at once obvious that the control and purview of the Wakf Board was only in relation to the audit of the

accounts and for contribution and no more. We are unable to read the terms of the compromise in the manner suggested by learned counsel for the appellant, as one intended to bring the endowments administered by the Prince of Arcot under the complete and over all control and purview of the Wakf Board, for all purposes and we have, therefore, no hesitation in rejecting this contention of the learned counsel for the appellant."

While dealing with the contention of Anjuman-e-Mussalliyan-e-Masjid-e-Wallajahi, the Division Bench further observed :-

"6. ... On the contrary, a careful study of the provisions of the Endowments Act shows that the rules in schedule C providing for a scheme of administration of the charitable and religious endowments under the control of the Prince of Arcot, are confined to the Tiruchirapalli District, whereas, the Institution in question is Wallajahi Mosque, regarding which the appellant had approached the 2nd respondent Board, is not governed by the provisions of the Endowments Act and therefore, those provisions cannot be regarded as corresponding to provisions in the Wakf Act in relation to the management and affairs of the Endowment in question, so as to be affected by the repeal enacted in Section 69(2) of the Wakf Act. It is in this connection that the decision of the Supreme Court, relied on by the learned counsel for the appellant, is relevant. There, it had been pointed out that the expression 'corresponding provision' cannot be given the meaning of 'identical provision', but that it would mean provisions in harmony with or conformable to the provisions and this construed, it is seen in this case that there was no corresponding provision with reference to the endowment in question in the Endowments Act relating to its management and administration as to be affected by the appeal enacted in section 69(2) of the Wakf Act. However, by the terms of the compromise, already referred to, the second respondent-Wakf Board had agreed not to exercise its control over the endowments administered by the Prince of Arcot except in relation to the payment of contribution and audit of the accounts and even on the assumption that there was repeal, the 2nd respondent-Wakf Board cannot exercise under Wakf Act any control of jurisdiction over the administration and management of the endowments of the Prince of Arcot. It is also necessary to bear in mind that only through the agency of the Wakf Board, the appellant can claim relief and not de hors that and when the control of the Wakf Board over the endowments administered by the Prince of Arcot had been limited under the terms of the compromise to payment of contribution and the audit of accounts, it cannot exercise any other control over the administration of the

endowments, even by way of granting permission to institute a suit, which would have the effect of interference with the internal administration and management of the endowments by the Prince of Arcot at the instance of the Wakf Board, through the appellant. We are, therefore, unable to accept this contention also urged by learned counsel for the appellant. No other point was urged. We, accordingly dismiss the Writ Appeal."

1.6 Subsequently, Parliament has enacted the Wakf Act, 1995, which is an Act to provide for better administration of the Wakf and the matters connected therein or incidental thereto. Under Section 112(1), the Wakf Act, 1954 and the Wakf Amendment Act, 1984 were repealed. Section 112(3) is as follows :-

"112(3) If, immediately before the commencement of this Act, in any State, there is in force in that State, any law which corresponds to this Act that corresponding law shall stand repealed:

Provided that such repeal shall not affect the previous operation of that corresponding law, and subject thereto, anything done or any action taken in the exercise of any power conferred by or under the corresponding law shall be deemed to have been done or taken in the exercise of the powers conferred by or under this Act as if this Act was in force on the day on which such things were done or action was taken."

1.7 At that stage, five persons including R.A. Malick and K. Thajudeen (Respondents 3 and 4 respectively) filed W.P.No.19594 of 1999 against Tamil Nadu Wakf Board as Respondent No.1 and the present writ petitioner as Respondent No.2 for issuing a writ of Mandamus directing the Tamil Nadu Wakf Board to takeover and assume charge and manage the properties indicated in the Prince of Arcot Endowment Act, 1922. Such writ petition was disposed of at the stage of admission by hearing the counsel for the petitioners in that writ petition by observing :-

"... It may be noted that the petitioners have not approached the Wakf Board making a similar relief. The proper remedy of the petitioners is to approach the Wakf Board. Therefore, we are not inclined to entertain the prayer of the petitioners at this stage and we dispose the writ petition without prejudice to the rights if any to approach Wakf Board or any other appropriate forum. If the petitioners make any such representation to the Wakf Board, the same shall be dealt with, in accordance with law and dispose of the same within a reasonable time."

1.8 Armed with such order, the aforesaid R.A. Malick, K. Thajudeen and three other persons filed petition before the Tamil

Nadu Wakf Board praying for the Wakf Board to take over, assume charge and manage the properties and to settle the frame a scheme relating to the Prince of Arcot Endowment and to direct the Superintendent of Wakfs, Tiruchirapalli to take charge of the Prince of Arcot Endowments. On the basis of such application, Wakf E.A.No.7 of 2000 has been registered by the Wakf Board. Certain preliminary objection regarding maintainability of such proceeding was raised by the present petitioner. Such preliminary objection has been repelled by the Wakf Board by its order dated 30.5.2001, wherein it has been indicated that Act II of 1923 stands repealed by the Wakf Act, 1995 and since the order passed by the High Court did not amount to a scheme decree, the Tamil Nadu Wakf Board can modify or alter the said decree and it has power to frame a scheme under Act 43 of 1995. Such order is impugned in the present writ petition.

2. The connected CRP.NO.1126 of 2002 relates to certain subsequent events which occurred after filing of W.P.No.18411 of 2001. The subsequent events are as follows:-

After passing the preliminary order dated 30.5.2001, the Wakf Board on 28.3.2002 passed an order directing the Prince of Arcot Endowments to maintain status quo regarding demolition of mosque portion and regarding construction of commercial complex. Such order was challenged by the writ petition before the Tribunal constituted under the Act and on 30.4.2002 the Tribunal passed an interim order suspending the order of the Board. Ultimately, on 29.5.2002, the Wakf Board passed an order removing the Prince of Arcot from the administration of the Endowments on the ground that charges had been proved. Against such order, the petitioner filed appeal under Section 83 of the Wakf Act, which was numbered as C.M.A.No.,1 of 2002. Since the appellate court refused to extend the initial stay granted, present CRP.NO.1126 of 2002 has been filed in this Court against such order of the appellate court. An order has been passed in CRP to maintain status quo.

3. Contempt Petition No.403 of 2002 has been filed alleging that the Wakf Board is trying to over-reach the order of the High Court in W.P.Nos.6010 of 19889 and 1312 of 1980 and the order of the Division Bench in W.A.No.2204 of 1987.

4. The main contention raised by the writ petitioner is regarding jurisdiction of the Wakf Board to take action against the petitioner. In this connection, it has been submitted by the petitioner that the provisions of the Wakf Act, 1995 are not applicable as such and the provisions contained in the Act II of 1923 being still applicable, the proceedings initiated by the Wakf Board are unwarranted.

5. Two major questions arise for determination in the context of the aforesaid submission. First question is as to whether the Wakf Act, 1995 is applicable and to what extent ? and the other

question is whether Act II of 1923 can be said to be repealed by the Wakf Act, 1995.

6. The Wakf Act, 1995 is an Act to provide for the better administration of Wakfs and for matters connected therewith or incidental thereto. Under section 2, such Act applies to all wakfs whether created before or after the commencement of the Act. The proviso, however, makes it clear that such Act is not applicable to Durgah Khawaja Saheb, Ajmer, which is governed by Act 36 of 1955. Under Section 3(r) "wakf" means the permanent dedication by a person professing Islam, of any movable or immovable property for any purpose recognised by the Muslim law. Under Section 3(s) "wakf deed" means any deed or instrument by which a wakf has been created and includes any valid subsequent deed or instrument by which any of the terms of the original dedication have been varied.

7. Even though the manner in which the present endowments has been created cannot be precisely recounted, the fact remains that those endowments created by the Nawabs of Carnatic which remain under the control of the Prince of Arcot are "wakf" within the meaning of the Wakf Act, 1995. Whatever might have been the express or implied term of the endowment as originally created, it is obvious that by Act II of 1923, certain terms of the endowments have been regulated. The statement of objects and reasons of Act II of 1923 itself makes it clear that before introduction of such Bill, certain charitable and religious endowments founded by Nawab Wallajah and Nawab Oomdataal-oomra of Arcot were being administered by the Prince of Arcot. Superintendence of the endowments was entrusted by the local Government to the Prince of Arcot and his successors. Since such endowments are undoubtedly "wakf" as defined under Section 2(r), the provisions of the Wakf Act, 1995 would obviously be applicable as contemplated in Section 2 of the Wakf Act, 1995. Unlike the special exclusion of Durgah Khawaja Saheb, Ajmer under the proviso, there is no exclusion in respect of any other wakf including the endorsements in question.

8. A faint contention was raised by the learned counsel appearing for the petitioner that the petitioner, namely, the Prince of Arcot, must be taken to be holding unique position as recognised under the Act II of 1923 and he cannot be considered as a "mutawalli" as defined under Section 3(i) of the Wakf Act, 1995. However, in view of the wide definition of mutawalli in section 3(i), such submission is only to be noticed to be rejected.

9. Chapter V of the Wakf Act, 1995 relates to Registration of Wakfs. Corresponding provisions contained in the Wakf Act, 1954, which have been repealed by the subsequent Wakf Act, 1995, were contained in Chapter IV of such earlier Act. There is no dispute that the Prince of Arcot Endowments had been so included in the Register of Wakf as contemplated in Section 26 of the Wakf Act, 1954,

which corresponds to Section 36 of the Wakf Act, 1995. As a matter of fact, the petitioner on two earlier occasions filed writ petitions unsuccessfully to exclude the petitioner's endowments from the register as evident from the facts and events noticed earlier in the judgment. In view of the above, there is no escape from the conclusion that the petitioner must be considered to be a wakf coming within the scope of the Wakf Act, 1995 and the Prince of Arcot is "Mutawalli".

10. The contention of the petitioner is however to the effect that even though the petitioner endowment is a wakf, all the provisions contained in the Wakf Act, 1995 are not ipso facto applicable and as agreed between the petitioner and the Wakf Board in the compromise, the petitioner is only obliged to make contribution, but the Wakf Board cannot interfere with the internal management. For the aforesaid purpose, the petitioner has placed reliance upon the terms of the compromise between the petitioner and the Wakf Board and also the observations made by the High Court in the subsequent rounds of litigation. A careful perusal of the decisions of the High Court, more particularly the decision of the single Judge in his judgment dated 28.1.1987, makes it clear that the question as to whether the entire provisions of the Wakf Act, 1954 were applicable or only certain provisions as agreed to by the Prince of Arcot were applicable, was expressly left open. This is apparent from the observation of the learned single Judge to the following effect :-

In my view there is no need to dwell upon the scope and amplitude under which the endowments shall be governed by Act 29 of 1954, for the purposes of the present case, because assuming that the case of the first-respondent that the entirety of the provisions of Act 29 of 1954 shall apply to the endowments is correct and has got to be accepted, yet the possibility of interference can come into play only if the administration or in other words the management of the endowments is not in consonance with the provisions of Act 29 of 1954."

11. The order of the learned single Judge makes it clear that the writ petition of the petitioner was allowed and the contemplated action of the Board was quashed as in the opinion of the learned single Judge there was no allegation that the administration of the endowment was not in consonance of the provisions of the Wakf Act, 195. Such conclusion of the learned single Judge was not interfered with by the Division Bench.

12. Even otherwise, if the provisions of a particular Act are held to be applicable, we do not think it would be open to any person or institution to contend that only some of the provisions would be applicable and not all the provisions. The question of applicability of any particular provision would always depend upon particular provision and cannot be controlled by any agreement by the

parties unless the provision itself contemplates that applicability of such provision would be subject to any contrary agreement between the parties. In such view of the matter, the contention of the petitioner to the effect that all the provisions of the Act 1995 may not apply and only few of the provisions relating to contribution and maintenance of accounts, etc. should be made applicable, cannot be countenanced.

13. The provisions of the Act II of 1923 have already been extracted in extenso. The statement of objects and reasons for introduction of such Bill has also been extracted. From a perusal of the provisions of the Act II of 1923, the following conclusions can be derived :-

(i) The Prince of Arcot was statutorily recognised as the Administrator for administering the charitable and religious endowments created much earlier by the Nawabs of Carnatic.

(ii) So far as the endowments and institutions of the District of Tiruchirpalli are concerned, the Act itself recognized a scheme as reflected in Schedule-C.

(iii) The power to alter the provisions or the Rules of the scheme except Rules 1, 2, 3 and 11 was vested with the Government and certain procedure for change of such Rules was contemplated. So far as the endowments, other than the Tiruchirapalli endowments, are concerned, such matters are left to be decided by the Rules as made by the local Government from time to time. There was a specific prohibition for filing of any suit claiming any relief specified in the Religious Endowments Act, 1863 or Section 92(1) of the Code of Civil Procedure, 1908.

14. The Rules contained in Schedule-C laid down certain provisions regarding appointment and removal of agent and regarding furnishing of accounts. However, neither in the Act nor in the Rules anything was contemplated regarding any disciplinary control over the Prince of Arcot who had been vested with the authority to administer the endowments.

15. Much reliance has been placed by the petitioner on clauses 1 and 4 of the compromise and the observation of the Division Bench made in connection with the aforesaid terms of the compromise. In clause 4 of the compromise, it has been indicated that the Special Officer for Wakfs/State Wakf Board will not interfere in the internal administration of the Prince of Arcot Endowments and its properties if the administration is in consonance with the Muslim Wakfs Act. As a matter of fact, the learned single Judge had observed at that stage, without deciding the question as to whether the Wakf Act, 1954 is applicable in its entirety, that there was no allegation that the administration was not in consonance with the Wakf Act and therefore there was no occasion to take any action. The Division Bench did not purport to lay down anything different from what had been observed by the learned single Judge. The observation made by the Division Bench

cannot be understood to mean that notwithstanding any transgression or violation, the Wakf Board would be powerless and would remain as a silent spectator. As observed by the Division Bench, all the clauses of the compromise should be read together. While clause 2 made it clear that the endowments would come within the scope of the Wakf Act, 1954, clause 4 emphasised that so long as the administration of the endowments is carried out in consonance with the Wakf Act, 1954, the Board should not interfere with the internal administration. In fact 1954 Act itself contemplated interference by the Board only if a particular wakf was not being administered in accordance with the provisions of the Wakf or the Act. The compromise cannot read to mean that any particular authority or institution would become above law and no action would be taken in accordance with law notwithstanding any transgression or violation of law. No immunity above law would have been contemplated to be given by way of compromise.

16. The next question is as to whether Act II of 1923 can be said to have been repealed either by 1954 Act or 1995 Act. In this context, learned counsel appearing for the petitioner has submitted that since it has been held by the Division Bench that Section 69 of the Wakf Act, 1954, which is similar to Section 112 of the Wakf Act, 1995, did not have the effect of repealing Act II of 1923, it must be held that Act II of 1923 must be held to still operative and it cannot be said that Wakf Act, 1995 has the effect of repealing the Act II of 1923.

17. So far as the effect of 1954 Act is concerned, learned single Judge refused to go into that question on the ground that the person who was raising the question has no locus standi to do so. The Division Bench, however, seems to have made certain observations which prima facie indicate as if 1923 Act was not repealed by 1954 Act. It has been observed by the Division Bench that the provisions of the corresponding Act are comprehensive and take in almost every aspect of proper management, administration, finance, accounting, etc., in relation to Wakf and on the contrary, the Rules in Schedule-C of 1923 Act provided for a scheme of administration of the charitable and religious endowments under the control of the Prince of Arcot confined to Tiruchirapalli District. It was further observed that no corresponding provision has been made in 1954 Act. In our opinion, the question as to whether Act II of 1923 stood repealed by the Wakf Act 1954 or by the Wakf Act 1995 is immaterial because even assuming that 1923 Act stood repealed by 1954 Act or 1995 Act, in view of the provisions contained in Section 69 of 1954 Act or Section 112 of 1995 Act, such repeal shall not affect the previous operation of the corresponding law and any action taken in exercise of any power conferred under the corresponding law shall be deemed to have been taken in exercise of the powers conferred by the subsequent Act. In other words, even assuming that 1923 Act stood repealed, the action taken under 1923 Act, namely, the scheme as

envisaged in Schedule-C, can be considered as a scheme under the new Act.

18. The next question is whether any action can be taken against the administrator. As already indicated, the Prince of Arcot must be taken to be a Mutawalli and the endowment must be taken to be a wakf within the meaning of the Wakf Act, 1995. If there is any violation, it would be always open to the competent authority to take action in accordance with law. It is of course true that under 1923 Act, there is no specific provision contemplating any action against the Prince of Arcot, whereas certain provisions are envisaged regarding control / removal of the agent appointed by the Prince of Arcot. It may be that at the time when 1923 Act was passed, the question of taking any action against the Prince of Arcot was left to the Legislative Council or the British Parliament and in that sense it can be said that Mutawalli could not be removed. The position must be, however, taken to be different after introduction of 1954 Act or at any rate after introduction of 1995 Act. Once the Prince of Arcot is considered as a Mutawalli as understood under the Act, it is obvious that necessary action against him can be taken as contemplated in the Wakf Act, 1995. This position also would be available even assuming that 1923 Act is not repealed by 1995 Act. Act II of 1923 covers only certain limited aspects and even assuming that 1923 Act coexists with 1995 Act, as 1923 Act is silent regarding this aspect resort can be had through the provisions contained in 1995 Act.

19. In view of the aforesaid conclusions, the main contentions raised in the writ petition being unacceptable, such writ petition is liable to be dismissed. Dismissal of the writ petition, however, should not be interpreted to mean that the Wakf Board can arbitrarily take action against the petitioner. It is made clear that unless it is found that there is justification to take action as contemplated in the various provisions, the Wakf Board should not unnecessarily interfere with the running of the endowments and only if it is found that the provisions contained in the Wakf Act, 1995 are not being carried out, necessary directions or orders can be passed by the Board. It is further made clear that it would be always open to the petitioner, if aggrieved by any order passed by the Wakf Board, to pursue the legal remedy as contemplated in the Wakf Act, 1995.

20. The question raised in the Civil Revision Petition relates to question of stay. At the time when the Civil Revision was entertained, an order of status quo was passed. Since the matter is pending before the Tribunal and now required to be decided by the Tribunal in accordance with law, it may not be appropriate to express any opinion on merit which may affect the proceedings before the Tribunal. In such view of the matter, we would only observe that the order already passed by the High Court shall continue till the matter

is finally decided by the Tribunal. It is further made clear that no opinion has been expressed on the merits of the contentions raised in the C.R.P.

21. So far as the contempt petition is concerned, in view of the conclusion to the effect that appropriate action can be taken under the Wakf Act, 1995, if there is any violation of relevant provision, it cannot be said that merely by initiating any proceeding the Wakf Board has committed any contempt and as such contempt proceeding is liable to be rejected.

22. For the aforesaid reasons, the writ petition and the contempt petition are dismissed and the Civil Revision Petition is disposed of subject to the observation made earlier. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

dpk

To

1. The Chief Executive Officer,
The TamilNadu Wakf Board,
3, Santhome High Road,
Chennai- 600 004.

2. The Principal Subordinate Judge,
Tiruchirapalli.

1 cc to Mr.A. Thiyagarajan, Advocate, Sr. 27983
1 cc to Mr.T.P. Senthil Kumar, Advocate, Sr. 28422
1 cc to MR.V. Raghavachari, Advocate, Sr. 27926
1 cc to Mr.S. Thiruvenkatasamy, (Wakfs Board) Advocate, Sr. 28000
2 ccs to Mr.V.S. Ramakrishnan, Advocte, Sr. 28005

WP.NO.18411/2001,
CRP.NO.1126/2002 AND
CONT.PETN.NO.403/2003

VC (CO)
kk 12/7